

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130228-U

NO. 4-13-0228

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 20, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
IVRAN D. GALMORE,	)	No. 06CF876
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justices Knecht and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant's judgment of conviction was not void on double-jeopardy grounds, and therefore could not be challenged at any time, the circuit court did not err in dismissing defendant's postconviction petition as untimely when it was filed five years after conviction was entered.

¶ 2 Defendant, Ivran D. Galmore, appeals from the circuit court's second-stage dismissal of his postconviction petition. In this appeal, defendant contends the court erred by granting the State's motion to dismiss on the grounds that defendant's petition was untimely filed. He claims that, because the judgment of conviction was void as a violation of double jeopardy, the limitations period does not apply so that the void judgment can be challenged at any time. We disagree and affirm.

¶ 3

**I. BACKGROUND**

¶ 4 On May 25, 2005, the State charged defendant with a drug offense while on bond in an unrelated drug offense. On November 7, 2007, defendant, while represented by counsel Edwin Piraino, pleaded guilty to the current offense—unlawful possession with intent to deliver between 15 and 100 grams of cocaine, a Class X felony (720 ILCS 570/401(a)(2)(A) (West 2006)). The trial court sentenced defendant to seven years and six months in prison in accordance with the plea agreement. His sentence was to run consecutively to the 19-year sentence imposed in his prior unrelated drug case in Champaign County case No. 04-CF-1516. Defendant did not appeal.

¶ 5 On August 7, 2012, defendant, while represented by Attorney Herbert L. Goldberg, filed a postconviction petition, alleging Attorney Piraino was ineffective for failing to (1) argue error or file a motion to dismiss the indictment after the sentencing court in Champaign County case No. 04-CF-1516, defendant's previous felony case, allowed the charges from the instant case to be used in aggravation during the sentencing hearing in his prior case, and (2) move to withdraw defendant's plea for the same reason. In his postconviction petition, defendant alleges the prior use of the charges from this case constitutes a violation of the double-jeopardy clause, in that defendant claims he was punished twice for the same offense. Had he been represented by competent counsel, defendant claims, his guilty plea and sentence in this case would have been vacated.

¶ 6 The State filed a motion to dismiss, claiming defendant's postconviction petition was untimely. On January 16, 2013, the circuit court entered an order dismissing defendant's petition on the grounds set forth by the State in its motion. On February 14, 2013, defendant filed a motion to reconsider, claiming, *inter alia*, the judgment attacked was void and therefore,

his contention of error was not subject to the time limitations generally applicable to postconviction petitions. Nevertheless, the court denied defendant's motion. This appeal followed.

¶ 7

## II. ANALYSIS

¶ 8 In this appeal, defendant, represented by his postconviction counsel, raises the same issue and claims the judgment of conviction entered upon his plea of guilty in 2007 is void as a violation of the double-jeopardy clause, and therefore, his postconviction petition raising this double-jeopardy issue was not subject to the three-year limitation generally applicable to postconviction petitions (725 ILCS 5/122-1(c) (West 2010)) because a void judgment can be challenged at any time. Defendant contends the "facts presented raise issues of first impression."

¶ 9 We review a circuit court's dismissal of a postconviction petition after the second stage under a *de novo* standard. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006) (at the second stage, all well-pleaded facts are taken as true, so a reviewing court will generally apply a *de novo* standard). We must start with the proposition that, indeed, a void judgment may be attacked at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002) (" '[a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally.' ") (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)). Therefore, a postconviction petition attacking a void judgment is not subject to the three-year limitation period set forth in the statute (725 ILCS 5/122-1(c) (West 2010)). See *People v. Tooley*, 328 Ill. App. 3d 418, 423 (2002) (a void judgment can be attacked at any time regardless of the untimeliness of the defendant's

postconviction petition).

¶ 10 We next determine whether defendant's conviction entered as a result of his negotiated plea is, in fact, a void judgment. Defendant insists his conviction is void because he was punished twice for the same offense when the sentencing court in his previous felony case used the current offense as an aggravating factor when imposing the 19-year sentence in that case and then as the basis for the 7-year term imposed here. And ultimately, defendant alleges in his postconviction petition that Attorney Piraino was ineffective for failing to move to dismiss the indictment on these grounds.

¶ 11 As stated above, a void judgment is one entered by a court without jurisdiction (*People v. Davis*, 156 Ill. 2d 149, 156 (1993)), or by a court that exceeded its jurisdiction by entering an order beyond its inherent power to do so (*People v. Villafuerte-Medrano*, 2012 IL App (2d) 110773, ¶ 11). Citing *Villafuerte-Medrano* as authority, defendant argues the alleged double-jeopardy violation constitutes a situation where the trial court exceeded its inherent power to enter a judgment. However, as the *Villafuerte-Medrano* court noted, our supreme court has rejected this same argument. See *Davis*, 156 Ill. 2d at 157 (a double-jeopardy violation does not implicate the court's jurisdiction over the matter). In *Davis*, the supreme court clarified that an order is void only when jurisdiction is lacking, whereas a voidable judgment is one entered erroneously by a court having jurisdiction. *Villafuerte-Medrano*, 2012 IL App (2d) 110773, ¶ 11. Given this authority, defendant's conviction, *even if* it violated the double-jeopardy clause, would not render the trial court without jurisdiction to enter the conviction. *People v. Dieterman*, 243 Ill. App. 3d 838, 843 (1993). In other words, defendant's conviction would never be void based solely on a double-jeopardy violation.

¶ 12 Further, defendant's underlying claim is without merit. It is a well-understood principle of law that a sentencing court may consider the circumstances of pending, prior, or subsequent criminal charges during the sentencing of a separately charged offense as a factor in aggravation without implicating double-jeopardy concerns. See, e.g., *Witte v. United States*, 515 U.S. 389, 398 (1995) (no double-jeopardy violation when a defendant is convicted and sentenced for a crime even though the conduct underlying that offense has been considered in determining the defendant's sentence for a previous conviction); *Williams v. Oklahoma*, 358 U.S. 576, 586 (1959) (the court's consideration of circumstances of a separate crime cannot be said to have resulted in punishing the defendant a second time for the same offense); *People v. Eldredge*, 41 Ill. 2d 520, 525 (1969) (the introduction of a defendant's prior criminal history as evidence in aggravation at sentencing, does not violate the double jeopardy clause); *People v. Jones*, 142 Ill. App. 3d 51, 56 (1986) (evidence of subsequent criminal conduct may be used at sentencing hearing on prior criminal charge); and *People v. Bankhead*, 123 Ill. App. 3d 137, 139 (1984) (no double-jeopardy violation when evidence of criminal conduct that was the subject of a pending charge was considered first in aggravation at sentencing for another offense and then in proof of the instant offense).

¶ 13 We conclude the circuit court did not err in dismissing defendant's postconviction petition as untimely because the petition was filed beyond the three-year time limitation and defendant had not sufficiently demonstrated the limitation period did not apply. See 725 ILCS 5/122-1(c) (West 2010). Further, (1) the underlying claim set forth in defendant's postconviction petition was without merit, (2) the petition did not make a substantial showing of a constitutional violation, and (3) defendant's conviction was not void as alleged.

¶ 14

### III. CONCLUSION

¶ 15 For the foregoing reasons, we affirm the circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/2002(a) (West 2012).

¶ 16 Affirmed.